

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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Federal Communications Commission
Office of Electricity

In the Matter of)

800 Data Base Access Tariffs and the)

800 Service Management System Tariff)

CC Docket No. 93-129

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PETITION FOR CLARIFICATION AND RECONSIDERATION

Pursuant to Section 1.106 of the Commission's Rules, Southwestern Bell Telephone Company ("SWBT") respectfully requests that the Commission clarify and/or reconsider certain aspects of the Report and Order ("R&O") in the above-captioned proceeding. This Petition focuses on the portion of the R&O relating to compliance with the Commission's affiliate transaction rules codified in Section 32.27 of the Commission's Rules.

I. PRICING OF SERVICES

The Commission needs to clarify the R&O's discussion of the scope of the affiliate transaction rules. In particular, contrary to the principles established in the Joint Cost Order, the language of the R&O indicates that the affiliate transaction rules regulate the price of transactions between a LEC and its affiliates. For example, the R&O states as follows:

Section 32.27(d) of the Commission's rules governs purchases of service between a regulated LEC and its affiliate. When either the affiliate or the regulated LEC is selling services to the other, it must price those services at prevailing company prices, if the services are also sold to unregulated customers, or at fully distributed costs if the regulated LEC or the affiliate is the only customer.¹

On the contrary, the affiliate transaction rules do not dictate how a LEC and its affiliate "must price those services," nor do these rules govern the purchase transaction itself. Rather, the

¹ R&O, ¶258 (emphasis added, footnotes omitted).

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affiliate transaction rules determine the amount that a LEC must record on its regulated books of account in connection with an affiliate transaction. As the Commission stated in the Joint Cost Order:

While we agree that the rules we adopt here should be suitable for an increasingly competitive telecommunications environment, we disagree with those parties who intimate that we should design these rules so as to cause the accounting system to produce information that would allow us to determine whether prices for nonregulated products and services are anti-competitively low. The pricing of individual nonregulated products and services does not fall within our statutory mandate. . . . The proper purpose of our cost allocation rules is to make sure that all of the costs of nonregulated activities are removed from the rate base and allowable expenses for interstate regulated services. It is not our purpose, nor should it be our purpose, to seek to attribute costs to particular nonregulated activities for purposes of establishing relationship between cost and price.²

Therefore, the Commission should clarify that the affiliate transaction rules (1) do not dictate the prices of services a LEC sells its affiliate and (2) only govern how such transactions are recorded on the LEC's regulated books and not the purchase transaction directly.

II. RECORDING REVENUE FROM SERVICES TO AFFILIATES

A subsequent discussion of SWBT's provision of nonregulated computer bureau services to Database Services Management, Inc. ("DSMI"), as agent of the Bell Operating Companies ("BOCs"), also requires clarification. Paragraph 263 of the R&O states as follows:

Therefore, all services, including nonregulated services, that Southwestern provides to DSMI are subject to the Commission's affiliate transaction rules. Those rules control how carriers record their affiliate transactions on the accounts they maintain under the Commission's Uniform System of Accounts. The rules require a carrier to record the services it provides to or obtains from affiliates at tariffed rates when applicable, at prevailing company prices when the provider of the services also provides substantial amounts of them to non-affiliates, or, absent a tariffed rate or prevailing company price, at fully-distributed costs. Those costs

²Joint Cost Order, CC Docket No. 86-111, 2 FCC Rcd 1298 ¶40 (1987), recon., 2 FCC Rcd 6283 (1987), further recon., 3 FCC Rcd 6701 (1988).

must be calculated in accordance with the standards and procedures the Commission has prescribed for apportioning carrier costs between regulated and nonregulated activities.

While this passage acknowledges that the rules govern how transactions are recorded on the USOA accounts,³ clarification is needed to assure that the underlined sentence in the above-quoted passage means that the affiliate transaction rules define how the LEC records revenues derived from services provided to affiliates.

With this clarification, the R&O would also indicate that the revenue SWBT records for the nonregulated computer bureau service provided to DSMI must be calculated in accordance with the fully distributed costing standards used to allocate costs between regulated and nonregulated activities. As explained below, SWBT objects to this application of the affiliate transaction rules to activities the costs of which have been removed from regulation via the Part 64 cost allocations in SWBT's CAM.

III. SWBT'S PROVISION OF COMPUTER BUREAU SERVICE TO DSMI IS NOT SUBJECT TO THE AFFILIATE TRANSACTION RULES

The R&O , at paragraph 263, concludes that "all services, including nonregulated services, that Southwestern provides to DSMI are subject to the Commission's affiliate transaction rules." Further, the R&O requires SWBT to amend its CAM to state that the terms of SWBT's provision of computer bureau service to DSMI is based on fully distributed costs.

³ This passage does not correct the R&O's prior statement that the rule regulates the pricing of affiliate services because it does not state that the method of recording transactions on the USOA accounts is the only function of the affiliate transaction rules.

As SWBT has explained in its challenges of the Common Carrier Bureau's ("Bureau") rulings concerning Citizens Utilities Company's CAM,⁴ Section 32.27, by its own terms, only applies to transactions between the LEC's "regulated activities" and its affiliates.⁵ As the R&O confirms, at paragraph 256, once the revenue from the computer bureau service exceeded one percent of SWBT's total revenue, "the Commission required LECs to reclassify such services from regulated to nonregulated accounts" Given that the computer bureau service has been reclassified to nonregulated accounts and thus is a nonregulated activity, the affiliate transaction rules are not applicable to the performance of such nonregulated service on behalf of an affiliate. The Commission confirmed this understanding of the affiliate transaction rules in the United Order, as follows:

[R]equiring a carrier to list an affiliate transaction in the CAM does not make that transaction subject to §32.27. Section 32.27 affects only transactions that are recorded in regulated accounts. When a carrier provides a nonregulated service to its affiliate and records the transaction in a nonregulated revenue account, §32.27 does not apply.⁶

SWBT's computer bureau service is a nonregulated service and SWBT records its revenue from such service in Account 5280, "nonregulated operating revenue." Thus, the requirement of the

⁴ Citizens Utilities Company Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, AAD 94-6, Memorandum Opinion and Order, 11 FCC Rcd 4676 (1996). SWBT Petition for Reconsideration, AAD 94-6, filed January 26, 1995; SWBT Application for Review, AAD 94-6, filed May 22, 1996.

⁵ SWBT also explained this in its May 5, 1994 Reply in this proceeding. See SWBT Reply at 19-20.

⁶ In the Matter of United Telephone Systems Companies' Permanent Cost Allocation Manuals for Separation of Regulated and Nonregulated Costs, 7 FCC Rcd 4370 ¶12 (1992)(emphasis added).

R&O that such nonregulated computer bureau services provided to its affiliate must comply with the affiliate transaction rules of Section 32.27 is inconsistent with the ruling in the United Order.

Application of the affiliate transaction rules to the computer bureau service is also inconsistent with the Joint Cost Order. The Joint Cost Order never contemplated that the provision of a nonregulated service to an affiliate would be subject to the Commission's affiliate transaction rules governing the amount of revenue a carrier should record for the sale of a service to an affiliate. In fact, in the Joint Cost Order, at paragraph 40, the Commission disclaimed any intention of determining the costs of individual nonregulated services:

It is not our purpose, nor should it be our purpose, to seek to attribute costs to particular nonregulated activities for purposes of establishing relationship between cost and price.

Here, however, even though SWBT's CAM removes from regulation the fully distributed costs of all resources used in furnishing all computer bureau services to all customers of such services, the R&O, contrary to the Joint Cost Order, would force SWBT to identify the costs of performing a particular nonregulated activity on behalf of one specific customer, DSMI. The Joint Cost Order did not require allocation of costs to specific nonregulated transactions and it does not make sense to do so.

The Part 64 cost allocation rules assure that the fully distributed cost of all nonregulated activities, including the computer bureau service, is removed from regulation. Therefore, it would be unnecessary and superfluous to require that the LEC determine the portion of nonregulated costs attributable to each transaction associated with a particular nonregulated service furnished to an affiliate.

Section 32.27 does not require transaction-specific cost allocation for nonregulated activities because it only applies to regulated activities. In fact, Section 32.27 uses the term “regulated activity” six times. The plain language of Section 32.27 demonstrates that it is limited to an affiliate’s transactions with the LEC’s “regulated activities.” By definition, those activities that are not “regulated activities” are “nonregulated activities.” Pursuant to the Commission’s CAM filing procedures, SWBT lists its “nonregulated activities” in Section II of its CAM. Specifically, on page II-2 of SWBT’s CAM, SWBT lists the “Computer Bureau Service” as a “nonregulated activity.” Therefore, SWBT does not apply the Section 32.27 affiliate transaction rules to the computer bureau service “nonregulated activity.”

Even though Section 32.27 is not applicable to require a determination of the fully distributed cost of furnishing the computer bureau service to DSMI, ratepayers of SWBT’s regulated services are fully protected (even ignoring price cap regulation) by the removal of all costs of the computer bureau service via Part 64 cost allocations as conducted in SWBT’s CAM.⁷ Not only do the rules not require an additional layer of transaction-specific cost allocation, such an allocation is pointless and not necessary (i) to ensure that regulated rates are not excessive; (ii)

⁷ Not only is Section 32.27 inapplicable by its own terms, but applying Section 32.27 to the performance of nonregulated activities on behalf of affiliates would be inconsistent with the purpose of the affiliate transaction rules. In the Joint Cost Order, ¶ 290, the Commission stated: “Our goal in establishing standards for transactions between affiliates is to prevent cost shifting to ratepayers by means of improper transfer pricing.” When costs of a nonregulated activity have been removed from regulation by the cost allocations in a carrier’s Part 64 CAM, cost shifting to ratepayers is not an issue when the carrier performs that activity for affiliated and unaffiliated customers. Part 64 cost allocations prevent shifting of those costs to ratepayers; it is certainly not necessary to perform a second layer of cost allocation of the nonregulated costs of that activity between affiliated and unaffiliated customers.

or otherwise “for the protection of consumers.”⁸ Further, redundant regulation that imposes unnecessary burdens and costs is not in the public interest. For example, the cost of compliance with such regulation tends to increase the price of services for rate-of-return carriers and tends to impede competition between LECs and competitors that are not required to incur such costs. Therefore, even if the Commission does not reconsider the R&O’s determination that the affiliate transaction rules apply to the computer bureau service transaction between SWBT and DSMI, the Commission should forbear from applying the affiliate transaction rules to such transactions pursuant to Section 401 of the Telecommunications Act of 1996.

For the foregoing reasons, the Commission should reconsider the R&O’s determination that the affiliate transaction rules apply to SWBT’s provision of computer bureau service to DSMI.

IV. SWBT SHOULD NOT BE REQUIRED TO REVISE THE TERMS OF THE COMPUTER BUREAU SERVICE IN ITS CAM.

Because the affiliate transaction rules do not apply to the computer bureau service, as explained above, SWBT should not be required to revise the computer bureau service transaction with DSMI in SWBT’s CAM to state “fully distributed cost” instead of “negotiated price” as the terms of the transaction.⁹ While SWBT’s revenue from this service is sufficient to cover SWBT’s

⁸ 47 U.S.C. §10 (Section 401 of the Telecommunications Act of 1996).

⁹ Paragraph 264 of the R&O mistakenly refers to a different transaction between SWBT and Bell Communications Research, Inc. (“Bellcore”): “Southwestern states that it provides ‘Computer Bureau Service’ to Bellcore at ‘negotiated price.’ Since Southwestern actually provides these services to DSMI, we require it to revise its manual to state this.” Actually, page V-63 of SWBT’s CAM already contains a “Computer Bureau Service” transaction directly between SWBT and DSMI. See SWBT’s CAM filed December 29, 1995. Therefore, SWBT construes paragraph 264 as referring to this transaction on page V-63 of SWBT’s CAM, and not to the separate transaction between SWBT and Bellcore that appears on page V-9 of SWBT’s

fully distributed costs,¹⁰ that does not mean that the transaction is subject to the affiliate transaction rules. In other words, the fact noted in the R&O that SWBT has determined its price based on fully distributed costs does not mean that SWBT believed that the affiliate transaction rules were applicable to this service. In fact, SWBT argued in its Reply that the affiliate transaction rules were not applicable.¹¹ In any event, SWBT's statements concerning "pricing" do not concern the method of recording transactions in SWBT's regulated books, which is the proper focus of the affiliate transaction rules.

Given that the affiliate transaction rules do not apply to SWBT's provision of the computer bureau service to DSMI, SWBT is filing this revision to its CAM under protest and subject to this Petition.¹²

Further, the requirements in paragraphs 264 and 265 of the R&O that SWBT file CAM revisions within 30 days after release of the R&O is contrary to Section 402 of the 1996 Act. SWBT also objects to this CAM filing requirement of the R&O on this basis. Section 402 of the Telecommunications Act of 1996 (the "1996 Act") states in part that the "Commission shall permit any common carrier . . . to file cost allocations manuals . . . annually, to the extent such

CAM. To the extent necessary, SWBT also requests reconsideration of the R&O's erroneous reference to this unrelated transaction.

¹⁰ SWBT is submitting by separate letter, under protest, the CAM amendment required by paragraph 264 of the R&O.

¹¹ SWBT Reply at 20.

¹² The other CAM revision required by paragraph 265 of the R&O is also an unnecessary and improper requirement. The services SWBT purchases from DSMI are already described on page V-90 of SWBT's CAM in a manner very similar to US WEST's CAM, with the exception that SWBT's CAM has only one entry describing the services; whereas US WEST has two entries describing the same services.

carrier is required to file such manuals[emphasis added]” Requiring LECs to file revisions to their CAMs more frequently than on an annual basis is contrary to the above-quoted provision of the new legislation. In granting SWBT’s Petition for Waiver of the CAM filing requirement in the February 20, 1996 Declaratory Ruling in RM-8181 concerning prison payphones, the Commission reasoned that it did not wish to prejudge the outcome of a rulemaking to implement the 1996 Act’s CAM filing requirements or to require LECs to take action the Commission might later determine to be contrary to Section 402.¹³ Consistent with its ruling in RM-8181, the R&O should not have required a CAM filing on a date other than December 31, the date of the annual CAM filing. Therefore, SWBT submits its CAM filing required by the R&O under protest also for this reason.¹⁴

For the foregoing reasons, the Commission should reconsider the requirements of the R&O that SWBT file revisions to its CAM.

V. CONCLUSION

For the reasons set forth in this Petition, the Commission should clarify that the affiliate transaction rules do not dictate the prices that LECs charge their affiliates for nonregulated services. In addition, the Commission should reconsider the R&O’s conclusion that the affiliate transaction rules apply to SWBT’s performance of the computer bureau service nonregulated activity on behalf of DSMI and require SWBT to determine the portion of nonregulated costs

¹³ Petition For Waiver and Partial Reconsideration or Stay of Inmate-Only Payphones Declaratory Ruling, RM-8181, Order, 11 FCC Rcd 8013 ¶8, released July 3, 1996.

¹⁴ SWBT’s position concerning Section 402’s annual CAM filing requirement is explained fully in its Comments and Reply Comments in CC Docket No. 96-193, Reform of Filing Requirements and Carrier Classification, FCC 96-370, released September 12, 1996.

attributable to SWBT's performance of this particular nonregulated activity on behalf of a particular affiliated customer. Instead, on reconsideration, the Commission should conclude that the aggregate Part 64 cost allocations between regulated and nonregulated activities of all resources used in connection with the computer bureau service is the only nonstructural accounting mechanism applicable under the current rules. In addition, due to the inapplicability of the affiliate transaction rules to such transactions with a nonregulated telephone activity and for the other reasons set forth in this Petition, the Commission should reconsider the requirement that SWBT amend the computer bureau service transaction with DSMI in SWBT's CAM. In addition, the Commission should conclude on reconsideration that all of the CAM filing requirements of the R&Q are unnecessary and contrary to the 1996 Act.

Respectfully submitted,

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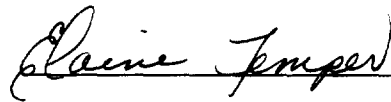
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November 27, 1996

Certificate of Service

I, Elaine Temper, hereby certify that the comments of Southwestern Bell Telephone Company on CC Docket No. 93-129 have been served this 27th day of November, 1996 to the Parties of Record.

A handwritten signature in cursive script, reading "Elaine Temper", is written over a horizontal line.

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